LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 24 1967
JOHN F. DAVIS, CLERK

In The
Supreme Court of the United States

OCTOBER TERM, 1967

No. ~~1314~~ 108

WALTER PETRONIA and ROSE PETRONIA, his wife;
MORRIS K. NAINOA and MARCELLA NAINOA, his wife;
CHARLES FRANKLE and HILDA FRANKLE, his wife; and
JOHN W. MASSEY, *Appellants,*

vs.

STATE OF ALASKA, one of the United States, *Appellee.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDITIONAL STATEMENT

J. DUANE VANCE

Of VANCE, DAVIES, ROBERTS & BETTIS
Attorneys for Appellants

1411 Fourth Avenue Building
Seattle, Washington 98101

THE ARGUS PRESS — SEATTLE, WASHINGTON

In The
Supreme Court of the United States

OCTOBER TERM, 1966

No. _____

WALTER PETRONIA and ROSE PETRONIA, his wife; MORRIS K. NAINOA and MARCELLA NAINOA, his wife; CHARLES FRANKLE and HILDA FRANKLE, his wife; and JOHN W. MASSEY, *Appellants,*

vs.

STATE OF ALASKA, one of the United States, *Appellee.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDITIONAL STATEMENT

J. DUANE VANCE

Of VANCE, DAVIES, ROBERTS & BEFTIS
Attorneys for Appellants

1411 Fourth Avenue Building
Seattle, Washington 98101

THE ARGUS PRESS — SEATTLE, WASHINGTON

INDEX

	Page
Jurisdictional Statement	1
(a) Opinions Below	2
(b) Statement of the Grounds on Which the Jurisdiction of This Court Is Invoked	2
(c) Question Presented by This Appeal	3
(d) Statement of the Case	3
(e) Grounds Upon Which It Is Contended That the Federal Questions Are Substantial	6
Conclusion	12
Appendix "A"	15
Appendix "B"	29
Appendix "C"	30

TABLE OF CASES

American Refrigeration Transit Co. v. Hall, 174 U.S. 70, 19 S.Ct. 599 6

Bantam Books v. Sullivan, 372 U.S. 58, 9 L.ed. 2d 584, 83 S.Ct. 631 3

Dahnke-Walker Mill Co. v. Bondurant, 257 U.S. 282, 66 L.ed. 239, 42 S.Ct. 106 3

Hays v. Pacific Mail Steamship Co., 17 How. 596, 15 L.ed. 254 7

Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450, 79 S.Ct. 357 ..... 9, 10

Ott v. Mississippi Valley Barge Co., 336 U.S. 169, 69 S.Ct. 432 6

TABLE OF CASES

	Page
Pullman Palace Car Co. v. Pennsylvania, 141 U.S. 18, 11 S.Ct. 876	7
Robbins v. Shelby County Taxing Dist., 120 U.S. 489, 493, 494, 7 S.Ct. 592	9
Shaffer v. Carter, 252 U.S. 37, 40 S.Ct. 221	9
Wisconsin v. J. C. Penney, 311 U.S. 435, 61 S.Ct. 246	10

STATUTES

R.C.W. 4.24.140	2, 5, 6
Alaska Statutes 43.20.010	3, 4
Alaska Statutes 43.20.040	4
Alaska Statutes 43.20.070	4
Alaska Statutes 43.20.130	4
28 USCA Section 1257(2)	2, 6
46 USC Sections 221, 222, 239, 541-713, inc.	8
46 USC Sections 564, 701	8

UNITED STATES CONSTITUTION

United States Constitution, 14th Amendment	2, 3, 5-6, 9

In The
Supreme Court of the United States

OCTOBER TERM, 1966

WALTER PETRONIA and ROSE PETRONIA, his wife; MORRIS K. NAINOA and MARCELLA NAINOA, his wife; CHARLES FRANKLE and HILDA FRANKLE, his wife; and JOHN W. MASSEY,

Appellants;

vs.

STATE OF ALASKA, one of the United States,

Appellee.

No. ____

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDITIONAL STATEMENT

Appellants appeal from the Judgment of the Supreme Court of the State of Washington signed on October 6, 1966 (and affirmed by an Order Denying Rehearing dated December 7, 1966) affirming a decision of the Superior Court of the State of Washington for King County and submit this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial federal question is presented.

The numbering and lettering below follows that set forth in Supreme Court Rule 15—1.

(a) OPINIONS BELOW

The official opinion of the Washington State Supreme Court is reported at Volume 69, Wash. (2d) 498, 418 P. (2d) 775. A copy of the opinion appears in the Appendix hereto as "A". The opinion of the Superior Court of the State of Washington (the trial court) was not reported. A copy of this opinion is likewise included in the Appendix as "B".

(b) STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) This action was instituted by the State of Alaska through its Attorney-General under the Reciprocal Tax Collection Statute of the State of Washington, R.C.W. 4.24.140, for the enforcement of the payment by the appellants, who are merchant seamen residing in Washington and Oregon, of income taxes asserted to be owed to the State of Alaska. In their answer, the appellants asserted that as so applied to them, the Alaska taxing statute was violative of the provisions of the Commerce Clause (Article I, Section 8, Clause 3) of, and the Due Process Clause of the 14th Amendment to, the United States Constitution.

(ii) Judgment of the Washington State Supreme Court was entered on October 6, 1966, and an Order Denying Re-Hearing dated December 7, 1966, was entered by the Washington State Supreme Court on December 8, 1966. The Notice of Appeal to the United States Supreme Court was filed with the Washington State Supreme Court on February 28, 1967.

(iii) Jurisdiction is believed to be conferred on the United States Supreme Court by the provisions of 28 USCA Section 1257(2).

(iv) Cases believed to sustain the jurisdiction are: *Bantam Books v. Sullivan*, 372 U.S. 58, 9 L.ed. 2d 584, 83 S.Ct. 631; *Dahnke-Walker Mill Co. v. Bondurant*, 257 U.S. 282, 66 L.ed. 239, 42 S.Ct. 106.

(v) The validity of the Alaska Net Income Tax Act is involved. The citation thereof is Alaska Statutes, 43.20.010 – 350 (pages 16-25). The pertinent text of the statute is set forth verbatim in the Appendix as "C".

(c) QUESTION PRESENTED BY THIS APPEAL

The state of Alaska seeks by statute to impose an income tax on the wages earned in the waters of Alaska by all merchant seamen employed on regular interstate ocean-going vessels, including the appellants who are non-residents of the State of Alaska. As applied to such non-residents of the state, is a statute imposing such a tax repugnant to the provisions of the Commerce Clause (Article I, Section 8, Clause 3) of, or the Due Process Clause of the 14th Amendment to, the Constitution of the United States?

(d) STATEMENT OF THE CASE

According to the stipulated facts of the case, the appellants were all merchant seamen and non-residents of the State of Alaska. None of them (a) owned any property, real or personal, in the State of Alaska; (b) maintained any domicile or residence in the State of Alaska; (c) had any dependents domiciled or resident in the State of Alaska, nor (d) had employment in the State of Alaska, other than employment as seamen.

The appellant seamen were all employed under

collective bargaining agreements, providing for hiring of seamen by various employers through dispatching halls maintained by the contracting union. Jobs were assigned according to seniority and time out of work. Some of the vessels upon which the appellants were employed transacted business in Alaska, which led to the imposition of the contested income tax upon the appellant seamen.

The State of Alaska has a Net Income Tax Act which is contained in Alaska Statutes 43.20.010 — 350, inclusive. The tax is imposed upon residents and non-residents alike at a fixed percentage of the amount payable to the United States under its income tax law and is imposed ". . . upon all income derived from sources within the state . . ." Alaska Statutes 43.20.010. Income from sources within the state is defined as including ". . . (2) Income from a business, trade, or profession, and compensation for services rendered in the state; . . ." Alaska Statutes 43.20.040. In another section, the statute provides, *"Employees of Interstate Carriers.* The tax levied by this chapter applies to that portion of the voyage pay of vessel personnel of interstate carriers, engaged in the Alaska trade, which is earned in the waters of the state . . ." Alaska Statutes 43.20.070. Actual days that a vessel may spend in Alaska waters is not reported — the time so spent is computed by an apportionment formula based upon comparative days and hours spent in various ports. Alaska Statutes 43.20.130.

The appellant seamen refused upon constitutional grounds to pay the tax as levied, all appellants, except [illegible], having filed protests. Copies of the protests were attached to the record.

The State of Alaska then commenced this action in the Superior Court of the State of Washington, pur-

suant to Washington's Reciprocal Tax Collection Statute, R.C.W. 4.24.140, to collect the tax. The defendants-appellants jointly answered, raising the federal constitution question specifically, as follows, in their answer:

> "The defendants separately and jointly claim that the tax sought to be imposed by the State of Alaska upon the respective defendants under the circumstances set forth are unlawful and unconstitutional, being in violation of Article I, Section 8, Clause 3, of the United States Constitution, and the Fourteenth Amendment thereto."

The case was tried upon a Stipulation of Facts, which was a part of the record below and is being made a part of the record in this Court, the last paragraph of which reads in part as follows:

> "The parties stipulate and agree that the sole issue in this case is whether the State of Alaska may, under these circumstances, lawfully and constitutionally, levy and collect an income tax upon these defendants, as provided in Alaska Statutes, Title 43, Section 43.20.010, et seq."

The Superior Court of the State of Washington (the trial court) passed specifically on the constitutional question in the Conclusions of Law made and entered in the cause.

The sole issue presented to the Washington State Supreme Court was whether the tax as so applied to the appellants was repugnant to the United States Constitution. Holding against the appellants, the Washington State Supreme Court said, "The trial court correctly held that the Alaska Net Income Tax, as applied to the defendant seamen, was not in violation of the Commerce Clause and the 14th Amend-

ment to the United States Constitution" 69 Wash. 2d 463, 474.

(e) GROUNDS UPON WHICH IT IS CONTENDED THAT THE FEDERAL QUESTIONS ARE SUBSTANTIAL

It is believed that the statements contained in (b), (c) and (d) above show that the nature of the case and the rulings of the Court below were such as to bring the case within the jurisdictional provisions relied upon (28 USCA Section 1257(2)) and the cases cited. We, therefore, confine our remarks here to the reasons why the questions presented in this case are so substantial as to require plenary consideration of the Court.

This case involves an important and substantial question of accommodation between the constitutional protection of interstate commerce as against the rights of the states to impose taxes where the tax is upon non-resident employees engaged solely in interstate ocean-going commerce where part of such employment brings them within the territorial waters of the states. The issue has not heretofore been squarely presented to this Court.

Ocean-going commerce, which is here involved, has always been held, by this Court, to be unique in the application of constitutional protections under the Commerce Clause. Thus, while the states in which the instrumentalities of interstate commerce are used on land may tax them (*American Refrigeration Transit Co. v. Hall*, 174 U.S. 70, 19 S.Ct. 589), and the same applies to water-borne commerce where the transportation is limited to inland waters (*Ott v. Mississippi Valley Barge Co.*, 336 U.S. 169, 69 S.Ct. 432),

as to ocean-going commerce, only the home port jurisdiction may tax such instrumentalities. (*Hays v. Pacific Mail Steamship Co.*, 17 How. 596, 15 L.ed. 254). In *Pullman Palace Car Co. v. Pennsylvania*, 141 U.S. 18, 11 S.Ct. 876, rejecting the argument that railroad cars should have the same treatment as ships, this Court said:

> "'Commerce on land between the different states is so strikingly dissimilar, in many respects, from commerce on water, that it is often difficult to regard them in the same aspect *in reference to the respective constitutional powers and duties* of the state and federal government.'" (Emphasis supplied)

The Washington State Supreme Court found these cases "not apposite" because they involved personal property taxes rather than income taxes. In distinguishing these cases on their specific holdings, the Washington State Supreme Court lost sight of, and failed to mention, the principle for which they stand: That because of the historical background of the Commerce Clause and the other reasons enunciated in those decisions, the applications of the constitutional protections against state interference are stronger and different as to ocean-going commerce than as to any other form of interstate commerce and state taxation thereof is to be viewed differently.

While not expressed, either in the opinion of the Washington State Supreme Court or the trial court, counsel is aware, from oral argument, of a feeling that interference in the form of taxation of seamen cannot constitute an interference with commerce itself. Such a feeling has surface, but only surface, plausibility. Commerce is composed of many things:

the capital to operate the business, the physical plant, the business to operate on and, it is submitted, of no less importance, the employees to run the instrumentality of the commerce. Vexatious interference with, or taxation for, the mere performance of their duties is no less an interference with commerce than restraints upon any of the other factors. The mere form-filing and reporting requirements that might be imposed by 10 or 12 of the 28 states having ocean-connected ports which the seaman might touch in a year would be onerous enough without considering the payment of the taxes.

Congress has enacted a large number of statutes, pursuant to its constitutional authority over interstate commerce, regulating the employment of seamen and their conditions of employment (46 USC Sections 221, 222, 239, 541-713, inc.). For example, a seaman is required by federal law to sign articles of employment which he cannot break for the duration of the articles without being subjected to federally sanctioned penalties (46 USC Sections 564, 701). So if a seaman signs aboard a vessel which his employer takes to Alaska, the seaman is required by federal law, enacted in protection of interstate commerce, to go, whether he so chooses or not. Under this taxing statute, the State of Alaska may tax him on the monies earned in performing his duties aboard that vessel during the period of time that his employer and the federal law require him to sail in the waters of Alaska. Upon reflection, it would appear shallow to assert that the performance of duties by employees in commerce is not an integral and essential part of "doing" commerce and that interference therewith is not an interference with commerce itself.

The case also involves an important and substantial

federal question of the rights of individual citizens of one state under the Due Process Clause of the 14th Amendment, to pursue callings in another state in the course of interstate commerce as against the rights of states to exact a price from non-residents engaged in activities in employment in interstate commerce within their borders. This Court has held that a state may constitutionally tax income earned on properties owned by a non-resident of a state. *Shaffer v. Carter*, 252 U.S. 37, 40 S.Ct. 221. It has also said that a state "'cannot impose taxes upon persons passing through the state, or coming into it, merely for a temporary purpose' such as itinerant drummers". *Robbins v. Shelby County Taxing Dist.*, 120 U.S. 489, 493, 494, 7 S.Ct. 592, and *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 79 S.Ct. 357. While the *Robbins* case involved a direct tax, the majority, in *Portland Cement*, treated the principle as being equally applicable in the consideration of a net income tax problem. Is the *Robbins* case still the law? Is the dicta quoted from the *Portland Cement Company* case the law? If the *Robbins* case is still the law, and if its principle is applicable in an income tax case as indicated in the *Portland Cement* case, then surely the Alaska net income tax, as applied to seamen on ocean-going vessels, is unconstitutional for it could hardly be denied that the seamen bear more kinship to the drummer *(Robbins)* than to the oil well owner *(Shaffer)*. Neither Court below denied that the seamen would fall within the class of persons of those "... coming into it (the state) merely for a temporary purpose" as those terms were used in *Robbins v. Shelby County Taxing District* and *Portland Cement v. Minnesota*, supra. Rather, the Supreme Court of Washington held that *Robbins v. Shelby*, supra, was distinguishable because there was a direct

tax involved, rather than an income tax, and ignored the fact that this Court had, by inference in the *Portland Cement* case, indicated that the same principle was applicable in a net income tax case.

In spite of many decisions upholding state taxes imposed upon business done by non-residents of the state, this Court has never dispensed with its constitutional doctrine that for the state to tax a non-resident, there must be some relationship to ". . . opportunities which it has given, to protection which it has afforded, to benefits which it has conferred . . ." *Wisconsin v. J. C. Penney,* 311 U.S. 435, 61 S.Ct. 246.

In this case, it is stipulated that:

> "The defendants worked aboard ship . . . their duties related principally to the operation and maintenance of the vessel . . . the defendant seamen were provided or furnished their usual quarters and subsistence aboard the vessel and their activities in or visits to the towns or communities in the State of Alaska were the same as usual and customary of visiting seamen in any port."

If, as the Washington State Supreme Court said, the mere engendering of the income-producing activity which led to the wages earned by the appellants was such a sufficient opportunity or protection or benefit as to justify taxation thereof, then that statement alone would have sufficed to dispose of the cases of *Northwestern States Portland Cement Co. v. Minnesota,* 358 U.S. 450, 79 S.Ct. 357, and *Wisconsin v. J. C. Penney,* 311 U.S. 435, 61 S.Ct. 246, and the many cases cited therein. This Court, however,

found it further necessary, in each case, to inquire whether, in addition to the mere creation of business, the state had furnished sufficient *quid pro quo* that it might tax the resident of another state. As the decision in this case now stands, the necessity of that inquiry is now eliminated. The mere creation of business alone, says the Washington State Supreme Court, is enough. Of course, the creation of business will always be present or the non-resident state would have nothing to tax. Therefore, all state income taxes on non-residents would, under the Washington State Supreme Court doctrine, be constitutional.

It is respectfully submitted that such a far-reaching doctrine, departing from the previous pronouncements of this Court, should be reviewed in plenary fashion by this Court.

If this Court, upon plenary hearing, should decide to adhere to its prior requirements for a *quid pro quo* from the taxing state, then it would be clear that the tax here could not stand. There is no *quid pro quo* here because these seamen do not even have to set foot on the soil of the State of Alaska. They perform all their services aboard the vessel; they are furnished their board and lodging there. They own no property in Alaska, and when they visit ashore, they are no more than visitors or tourists.

This case is of substantial importance to a large number of states and to a large group of employees. There are 22 states, including the State of Alaska, plus the District of Columbia, which border on the ocean and which could impose similar taxes upon seamen, should this tax be upheld. In addition, since the opening of the St. Lawrence Freeway, an additional six states bordering on the Great Lakes have

ports open to ocean-going commerce and could impose similar taxes. There are estimated to be some 125,000 seamen engaged in ocean-going commerce calling at ports in these various states. With the ever-increasing demand for tax money, there is every reason to believe that the other 28 states would, sooner or later, and probably sooner, follow the lead of Alaska in imposing such taxes. Thus the significance of the case at bar far outstrips its importance to the individual litigants, or even to the trade in the Pacific Northwest where it originated.

CONCLUSION

It is clear that this Court has jurisdiction of this appeal and, it is submitted, the matter is of such substantial importance as to justify full hearing by this Court.

Respectfully submitted,

J. DUANE VANCE

Of VANCE, DAVIES, ROBERTS & BETTIS
Attorneys for Appellants

1411 Fourth Avenue Building
Seattle, Washington 98101

ERRATA IN APPENDICES

p. 17: "Applying the ration . . ." should be "Applying the ratio . . ." (First sentence, second paragraph from bottom of page.)

p. 27: ". . . imposition of income taxes up them . . . " should be "imposition of income taxes upon them. . ." (First sentence of last paragraph on page)

p. 32: ". . . formed or Ieated in the state." should be ". . . formed or located in the state." (Last line in (ii).

p. 34: "(e) The departamnt . . ." should be "(e) The department . . ."

APPENDIX "A"

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF ALASKA, one of the United States, *Respondent*, vs. WALTER PETRONIA and ROSE PETRONIA, his wife, et al, *Appellants*.	No. 38086 DEPARTMENT ONE

Filed October 6, 1966

This is an appeal from a judgment entered in four consolidated cases by the superior court for King County. These actions were instituted by the attorney general of the State of Alaska under our reciprocal tax collection statute, R.C.W. 4.24.140, for the enforcement of the payment by certain merchant seamen of income taxes asserted to be owed to the State of Alaska.

Of the four defendant (appellant) seamen, Walter Petronia, Morris K. Nainoa and Charles Frankle are residents of the State of Washington, and John W. Massey is a resident of the State of Oregon. All, however, were covered by collective bargaining agreements between the Pacific District of the Seafarers International Union and the Pacific Maritime Association, and were hired out of the union dispatch hall in Seattle. The question of this court's jurisdiction is not raised by any of the defendants. The facts are set out in a written stipulation between counsel for the parties and are undisputed.

The defendants' duties as seamen were exclusively on board ships, relating principally to the operation and maintenance of the vessels which they were aboard. For the taxable year in question, 1960, they earned a substantial percentage of their voyage pay while the vessels upon which they were serving were within the boundaries of the State of Alaska.

The pertinent part of Title 43, Alaska Statutes, applicable to the defendants provides:

> Sec. 43.20.010. *Tax on individuals, fiduciaries, corporations, and banks.* (a) There is levied and there shall be collected and paid for each taxable year upon the net income of every resident and non-resident individual, fiduciary, and bank that is required to make a return and pay a tax under the Federal Income Tax law a tax equal to 16 per cent of the total income tax that would be payable for the same taxable year to the United States . . .
>
> Sec. 43.20.040. *Income from sources in the state.* (a) Income from sources in the state, for the purposes of this chapter, includes . . . (2) Income from a business, trade, or profession, and compensation for services rendered in the state . . .
>
> Sec. 43.20.070. *Employees of interstate carriers. The tax levied by this chapter applies to that portion of the voyage pay of vessel personnel of interstate carriers engaged in the Alaska trade which is earned in the waters of the state.* The section applies to that portion of the pay earned in the state of the personnel of carriers operating vehicles or airplanes on land or in the air on routes to and from the state. *In determining*

the portion of the voyage pay of vessel personnel earned in the waters of the state, the method of allocation provided for in §130(g) of this chapter shall be used. (Italics ours.)

Sec. 43.20.130. *Allocation of business income* . . .
(g) The value of vessels operating on the high seas and compensation of employees engaged in operating the vessels shall be apportioned to the state in the ratio which the number of days spent in ports inside the state bears to the total number of days spent in ports inside and outside the state. The term "days spent in ports" does not include periods when ships are tied up because of strikes or withheld from the Alaska services for repairs, or because of seasonal reduction of service. Days in port are computed by dividing the aggregate number of hours in all ports by 24. The value of aircraft and automotive vehicles operating as freight and passenger carriers from, to, and inside the state and compensation of employees so engaged are apportioned to the state in the ratio which the number of days during which the services are rendered inside the state bears to the total number of days during which the services are rendered inside and outside the state.

Applying the ration in § 43.20.130, *supra*, the defendants earned approximately the following percentage of voyage pay while serving as seamen aboard vessels within the waters of Alaska: For the taxable year of 1960, Petronia, 17 per cent; Naimoa, 16 per cent; Frankle, 26 per cent; and Massey, a higher percentage.

The apportionment of wages earned in Alaska by the defendants, and the amount of taxes assessed

them in pursuance of the statutes, are not in issue in this case. All parties agree that the sole issue is whether the State of Alaska can constitutionally levy a tax on the net income of seamen engaged in interstate and foreign commerce, where the tax is levied only on that portion of the seamen's net income which is attributed to their activity within the boundaries of the State of Alaska. The trial court held that the Alaska net income tax was constitutional and entered judgment against the defendants in the amounts due under the act, in pursuance of the stipulation. The defendants appeal.

Although the parties raise no question as to the jurisdiction of this court on this appeal, we have nevertheless considered the propriety of our considering, in the first instance, the issue of the constitutionality of an enactment of a sister state. We consider this normally to be the prerogative of the state wherein the legislation is enacted; however, in the instant case we have acquired jurisdiction at the express request of the attorney general of Alaska based upon the following reciprocity statutes existing between our state, by his institution of these consolidated actions:

> Sec. 43.10.070 [Alaska Statute]. *Reciprocity in collection of taxes.* (a) The courts of the state shall recognize and enforce the liability for taxes lawfully imposed by the laws of every state or territory which extends a like comity in respect to the liability for taxes lawfully imposed by the laws of this state. The officials of a state or territory may bring action in the courts of this state for the collection of their taxes. The certificate of the secretary of state of the other state or territory that the officials have the authority to

collect the taxes sought to be collected by the action is conclusive proof of that authority.

(b) The attorney general may bring action in the courts of other states or territories to collect taxes due the state.

R.C.W. 4.24.140. *Action by another state to enforce tax liability.* The courts of the state shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect to the liability for taxes lawfully imposed by the laws of this state and the officials of such state are hereby authorized to bring an action in all the courts of this state for the collection of such taxes: *Provided,* That the courts of this state shall not recognize claims for such taxes against this state or any of its political subdivisions: *Provided, further,* That the time limitations upon the bringing of such actions which may be imposed by the laws of such other state shall not be tolled by the absence from such state of the person from whom the taxes are sought. The certificate of the secretary of state of such other state to the effect that such officials have the authority to collect the taxes sought to be recovered by such action shall be conclusive proof of that authority.

The constitutionality of the Alaska Net Income Tax Act, as it applies to these defendants, has been interposed as a defense. We therefore have no alternative other than to test the constitutionality of this enactment, in view of the reciprocity statutes, *supra.*

The defendants first contend that the Alaska Net Income Tax Act, as it applies to the defendant sea-

men, constitutes a deprivation of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

The defendants admit that a state may levy a personal income tax upon a nonresident under certain conditions. But these conditions require the existence of minimum connections between the nonresident and the taxing authority. The defendants cite *Shaffer v. Carter*, 252 U.S. 37, 64 L.Ed. 445, 40 Sup.Ct. 221 (1920); *Northwestern States Portland Cement Co. v. Minnesota and Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 3 L.Ed. (2d) 421, 79 Sup.Ct. 357 (1959); *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 85 L.Ed. 267, 61 Sup.Ct. 246 (1940).

We find no difficulty in ascertaining that these cases support the rule of law as stated by the defendants. In *Northwestern States Portland Cement Co. v. Minnesota and Williams v. Stockham Valves & Fittings, Inc., supra*, the court stated:

> It strains reality to say, in terms of our decisions, that each of the corporations here *was not sufficiently involved in local events* to forge "some definite link, *some minimum connection*" sufficient to satisfy due process requirements.... (*Italics ours.*)

The court further stated, quoting from *Wisconsin v. J. C. Penney Co., supra*, that

> The "*controlling question is whether the state has given anything for which it can ask return.*" Since by "the practical operation of [the] tax the state has exerted its power in relation to *opportunities which it has given, to protection which it has afforded, to benefits which it has conferred*

. . . " it "is free to pursue its own fiscal policies, unembarrassed by the Constitution . . . (Italics ours.)

The defendants argue that the rule as applied to nonresident corporations and nonresident individuals transacting business on land within a state is not comparable to the activities of seamen on vessels within a state's waters, which are open to interstate and foreign commerce; that the benefits afforded seamen are *de minimus;* that virtually all the protection normally afforded by a state to a nonresident employee is afforded to seamen exclusively by the federal government; that virtually the only benefits available from the state of Alaska to seamen such as the defendants are the protection and benefits they are afforded by the state when they are on shore in strictly a tourist or recreational capacity.

This argument of the defendants is impressive; however, it overlooks a most significant element considered in applying the test of benefits in determining minimum connections. Probably the most significant benefits in the eyes of these defendant seamen are the wages they contemplated receiving for their services during the course of the vessel's voyage. The business productivity generated by Alaska was accountable for the wages earned by the defendants when they were in Alaskan waters. The activity of their employment in Alaska constituted a minimum of 16 per cent of their voyage pay for the year 1960, within the meaning of the Alaska statute, § 43.20.070, *supra.* We find no distinction between business generated by the economic activities of Alaska accountable for the employment of nonresidents whether it be on land or on the water within the Alaskan boundaries. We are satisfied that the benefits of employ-

ment afforded by this economic activity of the State of Alaska constituted minimum connections within the rule to avoid a denial of due process under the Fourteenth Amendment to the United States Constitution.

The defendants contend that the Alaska Net Income Tax Act, as it applies to seamen, is in violation of the commerce clause of U. S. Const. art. 1, § 8, clause 3.

The defendants first argue that the tax violates a rule of uniformity as applied to commerce; that the state of Alaska is forbidden to act in this area affecting commerce, despite the inaction of Congress, since it is an area which requires a uniform national system of regulation, and therefore requires the exclusive legislation of Congress, citing *Cooley v. Board of Wardens of Port of Philadelphia*, 12 Howard 299, 13 L.Ed. 996 (1851); *Hays v. Pacific Mail S. S. Co.*, 17 Howard 596, 15 L.Ed. 254 (1855); *Southern Pac. Co. v. Jensen*, 224 U.S. 205, 61 L.Ed. 1086 37 Sup. Ct. 524 (1917); The Law of Admiralty, Gilmore & Black, (1957) ps. 43, 44.

The defendants' argument is characterized by the following pertinent quotes from the above authorities in support of this rule:

"Either absolutely to affirm, or deny that the nature of this power [to regulate commerce] requires exclusive legislation by Congress, is to lose sight of the nature of the subjects of this power, and to assert concerning all of them, what is really applicable but to a part. Whatever subjects of this power are in their nature national, or admit only of one uniform system, or plan of

regulation, may just be said to be of such a nature as to require exclusive legislation by Congress. Cooley v. Board of Wardens of Port of Philadelphia, supra, p. 319.

If New York can subject foreign ships coming into her ports to such obligations as those imposed by her Compensation Statute, other States may do likewise. The necessary consequence would be destruction of *the very uniformity in respect to maritime matters which the Constitution was designed to establish;* and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded . . . *Southern Pac. Co. v. Jensen, supra,* p. 217.

These latter cases are now in a sense drowned law, since Congress has enacted a Federal Longshoremen's compensation statute . . . But, however, one may react emotionally to the bringing to bear of their high-flown vaguenesses to the barring of the tiny and doubtless pathetically needed recoveries that were at stake, it is impossible not to concede that the *major* premise they state is a sound one. *If there is any sense at all in making maritime law a federal subject, then there must be some limit set to the power of the states to interfere in the field of its working.* The Law of Admiralty, Gilmore & Black, *supra,* p. 43. (Italics ours.)

The above cases (*Southern Pac. Co. v. Jensen, supra* and *Cooley v. Board of Wardens of Port of Philadelphia, supra*) not only characterize the uniformity argument but they also indicate that it must be applied to the facts of each case. In *Cooley v. Board of Wardens of Port of Philadelphia, supra,*

the court found there was no interference with the rule of uniformity by state licensing of harbor pilots, holding that problems involving pilots were local in nature, and noting that Congress had passed an act of August 7, 1789, § 4 (1 Stat. at Large 54), which specifically provided that regulation of pilots in bays, inlets and harbors shall be regulated by state law until further legislative provision may be made by Congress.

In *Southern Pac. Co. v. Jensen, supra*, the state of New York, by subjecting foreign ships to the obligation of her compensation statutes, was clearly interfering with a uniform system for the protection of seamen which was later recognized by the enactment of the Longshoremen's Compensation Statute, as cited in Gilmore & Black, *supra*.

In the instant case there is no attempt to regulate the activities of seamen in Alaskan waters by interference with the uniformity of the operation of the shipping industry by the imposition of the income tax on the earnings of seamen in Alaska.

The difference between interference and noninterference with the rule of uniformity as it applies to maritime law is illustrated by the history of the Alaska Net Income Tax Act itself. A law similar to the one which presently exists was enacted by the Territorial Legislature in Alaska in 1949. It provided for a net income tax on seamen's wages to be withheld by their employers. In *Alaska Steamship Co. v. McGoldrick*, 180 F.2d 305 (1950), this enactment was held by the Ninth Circuit Court of Appeals not to be repugnant to the commerce clause of the United States Constitution. As an outgrowth of this case, the United States Congress in 1959 passed a law, 48

U.S.C.A. § 601, prohibiting the withholding of any sums from a master's, officer's, or seaman's wages for state tax purposes in vessels engaged in foreign, coastwise, intercoastal, interstate, or non-contiguous trade. However, the right of the Territory of Alaska to impose taxes was not disturbed; it was only the withholding of monies from seamen's wages to which Congress directed and asserted its jurisdiction.

The defendants argue, however, that the above 1959 enactment demonstrates that the taxation of seamen engaged in coastwise trade or in foreign trade can admit only of a single system of regulation. We disagree.

Congress clearly did not base this enactment upon a determination that the imposition of the tax by the territory of Alaska violates a constitutional rule of uniformity. Congress rather directed its action against the requirement by the Alaskan territory that shipping concerns withhold monies from seamen's wages. That this was Congress' concern is expressly disclosed by reference to its proceedings (86th Congress, 1st Session, Senate Report No. 433, p. 3, June 25, 1959) during consideration of the passage of the enactment:

> S. 1958 would relieve the seamen and the steamship companies of the accounting burden enumerated above; it would also clarify the legal conflict between State and Federal law.
>
> *It is to be noted, however, that this legislation will not relieve the seaman of his liability to pay taxes properly due,* will not affect the Federal withholding taxes, *and will not in any way impair the general tax authority of the States.*

> Comments from the Maritime Administration of the Department of Commerce and the Department of State interposed no objection to favorable consideration of S. 1958. *The Department of the Treasury, viewing the legislation as a curb on the taxing jurisdiction of a State, recommended against enactment. As noted earlier, your committee does not believe this legislation would in any way affect the right of the State to tax; it would only limit in one particular the procedures for collecting those taxes.* (Italics ours.)

The test of whether any particular matter is maritime in nature and is thereby precluded from state regulation or legislation is whether or not the exclusive features of admiralty matters are involved. In *Standard Dredging Corp. v. Murphy*, 319 U.S. 306, 309, 310, 87 L.ed. 1416, 63 Sup.Ct. 1067 (1943), the United States Supreme Court said:

> When state compensation laws began to provide a remedy for maritime torts, it was at least arguable that the state remedy interfered with the existing admiralty system of relief through actions such as maintenance and cure. But in dealing with unemployment insurance "exclusive federal jurisdiction" is not affected at all. Congress retains the power to act in the field, and in the meantime, federal courts have nothing to do with it. *No principle of admiralty requires uniformity of state taxation.* Taxes on vessels and other business activities of operators have previously been upheld . . . (Italics ours.)

We hold that the rule requiring a uniform system regulated solely by the federal government in maritime commerce has not been violated by the imposi-

tion of taxes on earnings of seamen within the waters of the state of Alaska by the Alaska Net Income Tax Act; that Congress has not disturbed the right of a state to impose income taxes on the wages of seamen earned within its boundaries.

The defendants argue that the commerce clause was violated by reason that the tax imposed on seamen's wages is inconsistent with *Robbins v. Shelby Cy. Taxing Dist.*, 120 U.S. 489, 30 L.ed. 694, 7 Sup. Ct. 592 (1887), also cited in the recent case of *Northwestern States Portland Cement Co. v. Minnesota* and *Williams v. Stockham Valves & Fittings, Inc., supra.* In that case there was an interference with the ability of an itinerant drummer, who resided in the state of Ohio, to do business in Tennessee by imposing a tax for the privilege of doing business in that state. This case is not apposite to the instant case. In *Robbins v. Shelby Cy. Taxing Dist., supra,* there was a direct interference with the right of a person to do business with a state by exacting a tax for the privilege. The Alaska Net Income Tax Act, as it applies to these seamen, makes no attempt to interfere with or control the conduct of any business. It is not a privilege tax.

The defendants contend that the imposition of income taxes upon them is contrary to the home port doctrine, which denies states other than the state of the home port the right to impose taxes on vessels engaged in lawful commerce on other than inland waters. Defendants cite *Hays v. Pacific Mail S.S. Co., supra; Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169, 93 L.ed. 585, 69 Sup.Ct. 432 (1949), and others. An examination of these cases discloses they are not apposite. These cases involved the exaction of personal property taxes on the vessels by

states other than the state of the home port, constituting an undue burden on commerce. The instant tax is not a direct tax upon interstate commerce or the vessels engaged therein. It is rather a tax upon the income derived therefrom, properly proportioned so as to tax only that net income of seamen which is earned within the jurisdiction of Alaska.

Defendants' counsel argue that defendant Massey is subjected to multiple taxation since as a resident of Oregon he is required to pay a tax upon all of his earnings. The constitutionality of the Oregon statute is not an issue in this case. We are concerned solely with the constitutionality of the Alaska enactment, which imposes taxes only on this defendant's income earned in the jurisdiction of Alaska. There is therefore no valid multiple taxation issue raised on this record.

The trial court correctly held that the Alaska Net Income Tax Act as applied to the defendant seamen was not in violation of the commerce clause and the Fourteenth Amendment to the United States Constitution.

The judgment is affirmed.

HUNTER, J.

WE CONCUR:

ROSELLINI, C. J.
HILL, J.
WARD, J. PRO TEM.
HALE, J.

APPENDIX "B"

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

STATE OF ALASKA, *Plaintiff*,

vs.

WALTER PETRONIA, *et al*, *Defendants*.

No. 606 995

ORAL DECISION

Before The Honorable JAMES W. HODSON

OCTOBER 13, 1964

THE COURT: Reluctantly, I think I am going to have to come to this conclusion: that there has been no question of due process, and that this is not an undue burden on interstate commerce. I do not like it, because it is just another indication of which way the straws are blowing; but it seems to me, from the consensus in reading these briefs and listening to the argument, that there is no doubt the Supreme Court of the United States would uphold it as presently constituted.

I will hold for the plaintiff.

APPENDIX "C"

70. Alaska Business License Act (§ § 43.70.010—43.70.120).

75. Fisheries Taxes (§ § 43.75.010—43.75.130).

80. General Provisions (§ § 43.80.010—43.80.040).

Chapter 20. Alaska Net Income Tax Act.

Article

1. Persons Subject to Tax(§ § 43.20.010—43.20.040).
2. Allocation and Apportionment (§ § 43.20.050—13.20.150).
3. Administration (§ § 43.20.160—43.20.210).
4. Enforcement (§ § 43.20.220—43.20.270).
5. General Provisions (§ § 43.20.280—43.20.350).

Article 1. Persons Subject to Tax.

Section

10. Tax on individuals, fiduciaries, corporations, and banks
20. Exemption
30. Returns and payment of tax
40. Income from sources in the state

Sec. 43.20.010. Tax on indivhduals, fiduciaries, corporations, and banks. (a) There is levied and there shall be collected and paid for each taxable year upon the net income of every resident and non resident

individual, fiduciary, and bank that is required to make a return and pay a tax under the Federal Income Tax law a tax equal to 16 per cent of the total income tax that would be payable for the same taxable year to the United States under the provisions of chapter 1 of subtitle A of the 1954 Internal Revenue Code, Public Law 591, 83rd Congress, 2nd Session, as amended, upon all income derived from sources within the state, without benefit of the deduction of the tax payable under this chapter to the state.

(b) There is levied and shall be collected and paid for each taxable year upon the net income of every resident and nonresident corporation that is required to make a return and pay a tax under the federal income tax that would be payable for the same taxable income tax that would be payable for the same taxable year to the United States under provisions of chapter 1 of subtitle A of the 1954 Internal Revenue Code, Public Law 591, 83rd Congress, 2nd Session, as amended, upon all income derived from sources within the state without benefit of the deductions of the taxes payable under this chapter to the state.

(c) The following exceptions, modifications, and additions apply to (a) and (b) of this section.

(1) All taxpayers whose incomes include a cost of living allowance which is exempt from the federal income tax shall determine and include that amount as part of their income as if the cost-of-living allowance were not exempt.

(2) Standard exemptions, credits, and deductions may not be claimed by persons who are not residents of the state for the full 12 months of the tax year and they are subject to the following limitations:

(A) Personal exemptions and dependency credits claimed may be allowed only in that proportion of the total exemptions and credits as the number of months the taxpayer is physically present in the state bears to 12 months. A fractional part of the month shall be disregarded unless it amounts to more than one-half of a month in which case it shall be considered as a month.

(B) Deductions claimed shall be allowed only if and to the extent that they are directly connected with

(i) income which arises from sources within the state; or

(ii) property having a situs for taxation within the state.

(C) Contributions or gifts claimed shall be allowed only

(i) in the amounts otherwise authorized in this chapter; and

(ii) if the contribtuions or gifts were made within the tax year to the state or to a political subdivision of the state for use exclusively for public purposes in the state or to a nonprofit corporation or association formed or located in the state.

(8) Banks chartered by the federal government or the state are exempt. (§ 5A ch 115 SLA 1949; am § 1 ch 132 SLA 1951; am § 2 ch 188 SLA 1955; am § 1 ch 64 SLA 1957; am § 1 ch 181 SLA 1957; am § 1 ch 55 SLA 1961; am § 1 ch 116 SLA 1961).

Sec. 43.20.020. Exemption. The tax levied in this

chapter does not apply to the pay of members of the armed forces of the United States or auxiliary branches of the armed forces. (§ 5E ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 3 ch 175 SLA 1959).

Sec. 43.20.030. Returns and payment of tax. (a) Every individual, fiduciary, partnership, corporation, and bank required to make a return under the provisions of the Internal Revenue Code shall at the same time file with the department a return setting out (1) the amount of tax and the balance of tax due or overpayment of tax as reported on returns made to the Collector of Internal Revenue; (2) the amount of tax due under this chapter, less credits claimed against the tax; and (3) other information for the purpose of carrying out the provisions of this chapter which the department requires.

(b) The return shall either be on oath or contain a written declaration that it is made under the penalty of perjury, and the department shall prescribe forms accordingly. The provisions of § § 6001(a); 6011(a); 6012(a), (b); 6013(a), (b), (d); 6014(a), (b); 6015; 6652; 6064; 6065(b); 6072; 6073; 6081; 6091; 6151(b); 6153; 6155(a); 6201(b); 6315; 6653(b); 6659 of the Internal Revenue Code of 1954 are adopted insofar as they are consistent with other provisions of this chapter.

(c) The total amount of tax imposed by this chapter is due and payable to the department at the same time and in the same manner as the tax payable to the United States Collector of Internal Revenue under the provisions of § § 6151(b); 6153; 6161(a); 6162 (a); 6165; 6201(b); 6313; 6315; 7101 of the Internal

Revenue Code of 1954.

(d) A taxpayer, upon request by the department, shall furnish to the department a true and correct copy of the tax return which he has filed with the United States Collector of Internal Revenue. Every taxpayer shall notify the department in writing of any alteration in, or modification of, his federal income tax return and of a recomputation of tax or determination of deficiency (whether with or without assessment). A full statement of the facts shall accompany this notice. The notice shall be filed within 20 days after the modification, recomputation, or determination of deficiency, and the taxpayer shall pay the additional tax or penalty under this chapter.

(e) The departemnt may credit or refund overpayment of taxes, taxes erroneously or illegally assessed or collected, penalties collected without authority, and taxes that are found unjustly assessed or excessive in amount, or otherwise wrongfully collected. The department shall by regulation provide how claims for credits or refunds are made, set limitations, and give notice of allowance or disallowance. The regulations shall be based upon the provisions of § § 31; 6151(c); 6401; 6402; 6403; 6511; 6512; 6513(a), (b) of the Internal Revenue Code of 1954 insofar as those provisions are consistent with other provisions of this chapter. When a refund is allowed to a taxpayer, it shall be paid out of the general fund on a warrant issued under a voucher approved by the department. (§ 7 ch 115 SLA 1949; am § 2 ch 132 SLA 1951; am § 4 ch 5 SLA 1953).

Sec. 43.20.040. Income from sources in the state. (a) Income from sources in the state, for the purposes

of this chapter, includes (1) income from real or tangible personal property located in the state; (2) income from a business, trade, or profession, and compensation for services rendered in the state; (3) income from stocks, bonds, notes, bank deposits, and other tangible personal property having a business or taxable situs in the state; (4) rentals and royalties for the use of, or for the privilege of using in the state, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property having a taxable or business situs in the state; and (5) income from intangible personal property located outside the state, including without limitation interest and dividends received by a resident of the state.

(b) "Resident" as used in this chapter includes natural persons domiciled in the state, domestic corporations, and firms or business organizations which are organized under the laws of and doing business in the state. (§ 5 B ch 115 SLA 1949; am § 1 ch 132 SLA 1951; am § 2 ch 188 SLA 1955).

Article 2. Allocation and Apportionment.

Section

50. Taxpayer liable

60. Direct allocation

70. Employees of interstate carriers

80. Allocation of nonbusiness income

90. Net rents and royalties

100. Capital gains and losses

110. Interest and dividends

120. Patent and copyright royalties

130. Allocation of business income

140. Apportionment by commissioner of revenue

150. Definitions

Sec. 43.20.050. Taxpayer liable. (a) A taxpayer who has income from business activity which is taxable both inside and outside this state or income from other sources both inside and outside this state shall allocate and apportion his net income as provided in § § 50—150 of this chapter.

(b) For purposes of allocation and apportionment of income under § § 50—150 of this chapter a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or (2) that state has jurisdiction to subject the taxpayer to a net income tax whether or not the state does so. (§ 5 C ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 175 SLA 1959).

Sec. 43.20.060. Direct allocation. If a taxpayer's gross income is derived from sources both inside and outside the state and the part inside is so separate and distinct from and unconnected with the part outside that the net income from the part inside can be determined without regard to the part outside, then the part outside the state shall not be considered in computing the income tax and § 130(a)—(f) of this chapter is not applicable. (§ 5 C ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 175 SLA 1959).

Sec. 43.20.070. Employees of interstate carriers. The tax levied by this chapter applies to that portion of the voyage pay of vessel personnel of interstate carriers engaged in the Alaska trade which is earned in the waters of the state. The tax also applies to that portion of the pay earned in the state of the personnel of carriers operating vehicles or airplanes on land or in the air on routes to and from the state. In determining the portion of the voyage pay of vessel personnel earned in the waters of the state, the method of allocation provided for in § 130(g) of this chapter shall be used. (§ 5 C ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 175 SLA 1959)

Sec. 43.20.080. Allocation of nonbusiness income. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income shall be allocated as provided in §§ 90—120 of this chapter. (§ 5 C ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 175 SLA 1959)

Sec. 43.20.090. Net rents and royalties. (a) Net rents and royalties are allocable to this state if they arise from

(1) real property located in this state; or

(2) tangible personal property

(A) to the extent that the property is used in this state, or

(B) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not or-

ganized under the laws of or taxable in the state in which the property is used.

(b) The extent of use of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is used in the state in which the property was located at the time the rental or royalty payer obtained possession. (§ 5 C ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 175 SLA 1959)

Sec. 43.20.100. Capital gains and losses. (a) Capital gains and losses are allocable to this state if they arise from

(1) sales of real property located in this state;

(2) sales of tangible personal property if

(A) the property had a situs in this state at the time of the sale, or

(B) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs;

(3) sales of intangible personal property, if the taxpayer's commercial domicile is in this state. (§ 5 C

ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 175 SLA 1959)

Sec. 43.20.110. Interest and dividends. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state. (§ 5 C ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 175 SLA 1959)

Sec. 43.20.120. Patent and copyright royalties. (a) Patent and copyright royalties are allocable to this state

(1) to the extent that the patent or copyright is used by the taxpayer in this state; or

(2) to the extent that the patent or copyright is used by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is used in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not reflect states of use, the patent is used in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is used in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of use, the copyright is used in the state in which the taxpayer's commercial domicile is located. (§ 5 C ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 175 SLA 1959)

Sec. 43.20.130. Allocation of business income. (a) All business income which cannot be directly apportioned and allocated to this state shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(b) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less the annual rental rate received by the taxpayer from subrentals. The average value of property is determined by averaging the values at the beginning and ending of the tax period by the commissioner of revenue may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(c) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in this state if

(1) the individual's service is performed entirely inside the state;

(2) the individual's service is performed both inside and outside the state, but the service performed outside the state is incidental to the individual's service inside the state; or

(3) some of the service is performed in the state and (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(d) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(e) Sales of tangible personal property are in this state if

(1) the property is delivered or shipped to a purchaser, other than the United States government, inside this state regardless of the f.o.b. point or other conditions of the sale; or

(2) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States government, or (B) the taxpayer is not taxable in the state of the purchaser.

(f) Sales, other than sales of tangible personal property, are in this state if

(1) the income-producing activity is performed in this state; or

(2) the income-producing activity is performed both inside and outside this state and more of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) The value of vessels operating on the high seas and compensation of employees engaged in operating the vessels shall be apportioned to the state in the ratio which the number of days spent in ports inside the state bears to the total number of days spent in ports inside and outside the state. The term "days spent in ports" does not include periods when ships are tied up because of strikes or withheld from the Alaska service for repairs, or because of seasonal reduction of service. Days in port are computed by dividing the aggregate number of hours in all ports by 24. The value of aircraft and automotive vehicles operating as freight and passenger carriers from, to, and inside the state and compensation of employees so engaged are apportioned to the state in the ratio which the number of days during which the services are rendered inside the state bears to the total number of days during which the services are rendered inside and outside the state. (§ 5 C ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 1 ch 64 SLA 1957; am § 1 ch 175 SLA 1959)

Sec. 43.20.140. Apportionment by commissioner of revenue. (a) If the allocation and apportionment provisions of §§ 50—150 of this chapter do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for,

or the commissioner of revenue may require, in respect to all or part of the taxpayer's business activity, if reasonable

(1) the exclusion of one or more of the factors;

(2) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(3) the employment of another method to determine an equitable allocation and apportionment of the taxpayer's income.

(b) The commissioner of revenue may use revenue miles traveled both inside and outside the state as a factor in apportioning the income of carriers if, in the opinion of the commissioner of revenue, the use of the factor would better represent the extent of the carrier's business activity in the state. The commissioner of revenue may adopt proper apportionment regulations in conformity with §§ 50—150 of this chapter for general application in similar cases. In the case of two or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interest, the commissioner of revenue may distribute, apportion, or allocate the tax where necessary to prevent evasion of payment. (§ 5 Ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 75 SLA 1959)

Sec. 43.20.150. Definitions. In §§ 50—150 of this chapter, unless the context otherwise requires,

(1) "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business, and includes income

from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

(2) "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(3) "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(4) "financial organization" means a bank, trust company, savings bank (industrial bank, land bank, safe deposit company), private banker, savings and loan association, credit union (cooperative bank), investment company, or any type of insurance company;

(5) "nonbusiness income" means all income other than business income;

(6) "sales" means all gross receipts of the taxpayer not allocated under §§ 30—120 of this chapter;

(7) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a foreign country or political subdivision of a foreign country. (§ 5 C ch 115 SLA 1949; added by § 1 ch 132 SLA 1951; am § 2 ch 64 SLA 1957; am § 1 ch 175 SLA 1959)

Article 3. Administration.

Section

160. Administration

170. Collection of income tax at source

180. Credits against tax

190. Publicity

200. Review and assessment

210. Additional penalty tax

Sec. 43.20.160. Administration. (a) The Department of Revenue shall administer this chapter.

(b) If a taxpayer fails to file a return in the time required by law or by regulation made under authority of law, or makes an erroneous or fraudulent return, the department shall proceed to assess the tax and make a return from information which it obtains. A return made and subscribed by the department is prima facie good and sufficient for all legal purposes.

(c) The department shall prescribe and furnish all necessary forms, and adopt and publish all necessary regulations in plain and concise language conformable with this chapter for the assessment and collection of the taxes imposed by this chapter. The department shall apply as far as practicable the administrative and judicial interpretations of the federal income tax law. The department shall also prepare a concise statement of the contents of the code sections referred to in this chapter for the information of the taxpayer and make them available to the taxpayer making a return.

(d) All money collected by the department under this chapter shall be deposited in the general fund of the state. (§ 14 ch 115 SLA 1949)

LIBRARY
SUPREME COURT, U. S.

No. 108

Office-Supreme Court, U.S.
FILED
JUL 20 1967
JOHN F. DAVIS, CLERK

In The
Supreme Court of the United States

OCTOBER TERM, 1966

WALTER PETRONIA and ROSE PETRONIA, his wife;
MORRIS K. NAINOA and MARCELLA NAINOA, his wife;
CHARLES FRANKLE and HILDA FRANKLE, his wife; and
JOHN W. MASSEY, *Appellants,*

vs.

STATE OF ALASKA, one of the United States, *Appellee.*

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF WASHINGTON

MOTION TO DISMISS

EDGAR PAUL BOYKO
Attorney General of Alaska
Attorney for Appellee

Pouch K
State Capitol
Juneau, Alaska 99801

THE ARGUS PRESS — SEATTLE, WASHINGTON

No. 1314

In The Supreme Court of the United States

OCTOBER TERM, 1966

WALTER PETRONIA and ROSE PETRONIA, his wife; MORRIS K. NAINOA and MARCELLA NAINOA, his wife; CHARLES FRANKLE and HILDA FRANKLE, his wife; and JOHN W. MASSEY, *Appellants,*

vs.

STATE OF ALASKA, one of the United States, *Appellee.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

EDGAR PAUL BOYKO
Attorney General of Alaska
Attorney for Appellee

Pouch K
State Capitol
Juneau, Alaska 99801

THE ARGUS PRESS — SEATTLE, WASHINGTON

In The
Supreme Court of the United States

OCTOBER TERM, 1966

WALTER PETRONIA and ROSE PETRONIA, his wife; MORRIS K. NAINOA and MARCELLA NAINOA, his wife; CHARLES FRANKLE and HILDA FRANKLE, his wife; and JOHN W. MASSEY, *Appellants*, vs. STATE OF ALASKA, one of the United States, *Appellee*.	No. 1314

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

The appellee, State of Alaska, moves pursuant to Rule 16(b) to dismiss the appeal herein on the ground that it does not present a substantial federal question.

This appeal arises from a case which was presented to a Washington State trial court on stipulated facts which reduced the controversy to one major legal issue, i.e.,

"Can the State of Alaska constitutionally levy a tax on the net income of seamen engaged in interstate and foreign commerce, where the tax is levied only on that portion of the seamen's net income which is attributable to their activity within the territorial boundaries of the State of Alaska?"

The Alaska tax was attacked on the grounds it violated the Commerce Clause and violated due process of law protected by the Fourteenth Amendment, United States Constitution.

The apportionment of wages earned in Alaska by the appellees was not questioned.

Recognizing that the issues raised by the pleadings and briefs below were strictly federal, the appellee contends that in light of existing authority the question is not so substantial as to warrant further consideration.

1. The question of whether the activity of merchant seamen engaged in operation of vessels plying Alaska waters enroute to or from Alaska ports is such as to allow Alaska to tax a fairly apportioned part of the net income derived without violation of due process of law, has been substantially resolved by decisions of this Court.

There is no longer a substantial question that an income tax fairly apportioned to activities conducted within the taxing state is not in conflict with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

As early as *Shaffer v. Carter*, 252 U.S. 37, 40 S. Ct. 221, 64 L.Ed. 445 (1919), upholding an Oklahoma state net income tax as applied to nonresidents, this Court stated:

> "In our system of government the states have general dominion, and, saving as restricted by particular provisions of the Federal Constitution, complete dominion over all persons, property and business transactions, within their borders; they assume and perform the duty of preserving and protecting all such persons, property and businesses, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses" 252 U.S. at 50.
>
> "That the state, from whose laws property and business and industry derive the protection without which production and gainful occupation would be impossible, is debarred from exacting a share of those gains in the form of income taxes for the support of the government, is a proposition so wholly inconsistent with fundamental principles as to be refuted by its mere statement" 252 U.S. at 50.

See also, *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60, 64 L.Ed. 460 (1919).

This Court has on several occasions discussed the minimal connections between an income producing activity and state taxation of that income necessary to satisfy due process requirements. Thus, in the case of *Ott. v. Mississippi Valley Barge Line Co.*, 366 U.S. 169, 69 S. Ct. 432, 93 L.Ed. 585 (1949), it was stated:

> "So far as due process is concerned, the *(ad valorem)* tax in practical operation has relation

> to opportunities, benefits or protection conferred or afforded by the taxing state. Those requirements are satisfied if the tax is fairly apportioned to the commerce carried on within the state" 366 U.S. at 173.

Stated in a different manner is *Wisconsin v. J. C. Penny Co.*, 311 U.S. 435 at 444.

> "The simple but controlling question is whether the state has given anything for which it can ask return."

The Court in *Wisconsin v. J. C. Penny Co., supra,* discussed the power of a state to tax in relation to opportunities which it gives and benefits conferred by reason of being an orderly, civilized society. The fact stipulation filed by the parties in the trial court discloses that Alaskan business afforded, during the year in question, a minimum of 17% of his income in the case of appellant Petronia, 26% in the case of appellant Frankle, 16% in the case of appellant Nainoa, and that appellant Massey also earned a considerable portion of his income within the State of Alaska. There is but little question that Alaska has therefore afforded the opportunities and benefits contemplated by this Court in the *Ott* and *J. C. Penney Co.* decisions. It is now beyond question that any regular, continuous, systematic, designed, competitive business activity carried on within a state, is sufficient to give that state taxing jurisdiction. *McGee v. International Shoe Co.*, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed. 223 (1957).

After discussing some of the decisions cited above the Washington Supreme Court in announcing the decision here appealed from, stated:

> "Probably the most significant benefits in the eyes of these defendant seamen (appellants here) are the wages they contemplated receiving for their services during the course of the vessel's voyage. The business productivity generated by Alaska was accountable for the wages earned by the defendants (appellants) when they were in Alaskan waters" 418 P.2d at 758.

In light of the several decisions of the United States Supreme Court and the conclusion reached by the Washington Supreme Court, little doubt remains that the taxing power of the State of Alaska properly reaches that portion of appellants' net income which is fairly attributable to their employment within the state.

2. A fairly apportioned income tax on the wages of seamen has so little effect on the interstate commerce in which a vessel is engaged that no unconstitutional burden could be present.

Bearing in mind the fact that the Alaska tax is being questioned as applied to the personal income of employee-seamen and not to the interstate carrier itself, it becomes apparent that any issues arising from the Commerce Clause of the United States Constitution have been substantially laid to rest by earlier decisions of this Court.

It has long been recognized that an income tax which applies to income derived from interstate activity differs substantially from a tax on the interstate activity itself. *Philadelphia & Southern Mail Steamship Co. v. Penna.*, 122 U.S. 326, 30 L.Ed. 1200 (1886). Thus, when Wisconsin sought to apply its net income tax to a domestic corporation engaged in interstate commerce, this Court recognized that a tax which merely affects profits from interstate commerce is not a direct burden thereon. *U. S. Glue v. Town of Oak Creek*, 247 U.S. 321, 38 S.Ct. 499, 62 L.Ed. 1135 (1918). The rule of *U. S. Glue* was subsequently broadened to include a nonresident corporation engaged exclusively in interstate commerce. *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33 (1940).

This Court has also resolved questions of the application of state net income taxes to nonresident individuals. Such a tax was sustained against attacks based on the Commerce Clause in *Shaffer v. Carter*, 252 U.S. 37, 40 S.Ct. 221, 64 L.Ed. 445 (1919), wherein it was recognized that a tax on the proceeds of interstate commerce is not a tax on the source of the income. Accordingly, in *New York ex rel Cohn v. Groves*, 300 U.S. 308, 57 S.Ct. 466, 81 L.Ed. 666 (137), this Court stated:

> "Neither the privilege nor the burden is affected by the character of the source from which

the income is derived. For that reason income is not necessarily clothed with the tax immunity enjoyed by its source."

Here the appellants contest a tax of the State of Alaska, not as it is applied to the equipment or profits of an interstate carrier, but merely to a portion of the income of such carrier's employees engaged in the operation of its vessels.

The line of cases which the appellee believes have substantially resolved the questions here presented culminated in *Northwestern States Portland Cement Co. v. Minnesota,* 358 U.S. 450, 79 S.Ct. 357 (1959). There is no principle of admirality which requires uniformity of state taxation and therefore causes this case to be afforded different treatment. See *Standard Dredging Co. v. Murphy,* 319 U.S. 306, 87 L.Ed. 1416 (1939).

The appellee concedes that the factual background against which this case arises differs from any previously before this Court.[1] In the context of broad constitutional policy, however, these differences are of little consequence when viewed in light of *Northwestern States Portland Cement, supra,* and its predecessors.

---

[1]Essentially the same Alaska revenue provision was before the Ninth Circuit in *Alaska Steamship Co. v. Mullaney,* 180 F.2d 805 (1950). That Court found no violation of the Due Process Clause or Commerce Clause in Alaska's taxation of seamen's wages.

CONCLUSION

The decision of the Supreme Court of Washington, sustaining the validity of Alaska's tax was firmly supported by pertinent decisions of this Court. In light of these decisions this appeal presents no substantial federal question and should be dismissed.

DATED at Juneau, Alaska, this 26th day of June, 1967.

Respectfully submitted,

EDGAR PAUL BOYKO
Attorney General of Alaska
Attorney for Appellee

Pouch K
State Capitol
Juneau, Alaska 99801

LIBRARY
SUPREME COURT, U. S.

No. [redacted] 108

Office-Supreme Court, U.S.
FILED
AUG 4 1967
JOHN F. DAVIS, CLERK

In The
Supreme Court of the United States
OCTOBER TERM, 1966

WALTER PETRONIA and ROSE PETRONIA his wife;
MORRIS K. NAINOA and MARCELLA NAINOA, his wife;
CHARLES FRANKLE and HILDA FRANKLE, his wife;
and JOHN W. MASSEY, *Appellants,*

v.

STATE OF ALASKA, one of the United States,
Appellee.

BRIEF OPPOSING MOTION TO DISMISS

J. DUANE VANCE of
VANCE, DAVIES, ROBERTS & BETTIS
Attorneys for Appellants

1411 Fourth Avenue Bldg.
Seattle, Washington

THE ARGUS PRESS SEATTLE, WASHINGTON

No. 1314

In The
Supreme Court of the United States
OCTOBER TERM, 1966

WALTER PETRONIA and ROSE PETRONIA his wife;
MORRIS K. NAINOA and MARCELLA NAINOA, his wife;
CHARLES FRANKLE and HILDA FRANKLE, his wife;
and JOHN W. MASSEY, *Appellants,*

v.

STATE OF ALASKA, one of the United States,
Appellee.

BRIEF OPPOSING MOTION TO DISMISS

J. DUANE VANCE of
VANCE, DAVIES, ROBERTS & BETTIS
Attorneys for Appellants

1411 Fourth Avenue Bldg.
Seattle, Washington

THE ARGUS PRESS — SEATTLE, WASHINGTON

INDEX

	Page
Rules of the Supreme Court	1
Appellee's Motion to Dismiss	1
Conclusion	4

TABLE OF CASES

Northwestern States Portland Cement Company v. Minnesota, 358 US 450, 79 S.Ct. 357, (1959)	2
Pullman Car Palace Car Co. v. Pennsylvania, 114 US 18, 11 S.Ct. 876	2

In The
Supreme Court of the United States

OCTOBER TERM, 1966

WALTER PETRONIA and ROSE PETRONIA his wife; MOSES K. NAINOA and MARCELLA NAINOA, his wife; CHARLES FRANKLE and HILDA FRANKLE, his wife; and JOHN W. MASSEY. *Appellants,* v. STATE OF ALASKA, one of the United States *Appellee.*	No. 1314

BRIEF OPPOSING MOTION TO DISMISS

The appellants herein file this brief pursuant to Rule 16.3 of Rules of the Supreme Court in answer to the appellee's motion to dismiss.

I.

APPELLEE'S MOTION TO DISMISS

Appellee's motion is based solely upon its assertion that no substantial federal question is raised.

Appellee's motion raises no issues toward which appellants have not already addressed themselves in the jurisdictional statement.

Appelle states on page 7 of its motion "The line of cases which the appellee believes have substantially resolved the questions here presented culminated in the *Northwestern States Portland Cement Company v. Minnesota,* 358 US 450, 79 S.Ct. 357, (1959)."

It is that very case which appellants submit reaffirms the existence of the substantial federal question in this case unless appellee's apparent contention that this court's discussion and review of authorities in that case is meaningless is to be accepted.

At page 458 of the report of that case in 358 US, the majority of this court said:

> "In keeping therewith a state 'cannot impose taxes upon persons passing through the state, or coming into it merely for temporary purposes' such as itinerate drummers . . . "

Certainly seamen fall within the classification of persons involved in that statement who are "passing through the state, or coming into it merely for temporary purposes . . . ".

Furthermore, the tax imposed here is sought to be imposed upon employees in that type of commerce which has received from this court the greatest constitutional protection of any form of commerce, to-wit, ocean-going commerce. *Pullman Car Palace Car Co. v. Pennsylvania,* 114 US 18, 11 S.Ct. 876.

II.

A FACTUAL CORRECTION

On page 4 of appellee's motion, the appellee (as did the Washington Supreme Court) incorrectly state that the respective percentage of income taxed of the individual appellants is the percentage of his income *during the year in question.* (Emphasis supplied,) This is not accurate. The stipulation of facts on which the case was tried and which was a part of the statement of facts in the State Supreme Court and is on file in the record of this court, states on pages 7, 8, 9 and 10 with reference to the respective appellants that the respective percentages taxed was that part of his voyage pay for "services on board *these vessels*" which was earned in the waters of the State of Alaska. (Emphasis supplied) The record does not further indicate what other vessels the appellants shipped on or how much they earned on such other vessels so there is no stipulation as to what percentage of the appellants annual income was earned in waters of Alaska. It is, however, inacurrate, as the Washington State Supreme Court and the appellee do, to state that it is a stipulation that this is the percentage of their total annual pay. It is only the percentage of the appellants' pay earned aboard those vessels on which they shipped that year which went to Alaska and on which tax was sought to be imposed.

III.

CONCLUSION

It is respectfully submitted that appellee's motion to dismiss should be denied.

Respectfully submitted,

J. DUANE VANCE of
VANCE, DAVIES, ROBERTS & BETTIS
Attorneys for Appellants

1411 Fourth Avenue Bldg.
Seattle, Washington

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

PETRONIA ET AL. v. ALASKA.

APPEAL FROM THE SUPREME COURT OF WASHINGTON.

No. 108. Decided October 9, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.

MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted.